

United States Postal Service and National Association of Letter Carriers, AFL-CIO and Preston Hall. Cases 16-CA-15857(P) and 16-CB-4218(P)

September 30, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

On January 20, 1993, the General Counsel of the National Labor Relations Board issued a consolidated complaint and notice of hearing in the above-entitled proceeding. The consolidated complaint alleges that the Respondent Employer violated Section 8(a)(1), (2), and (3) of the National Labor Relations Act by refusing to honor Charging Party employee Preston Hall's request to cease deducting union dues from his paycheck following his resignation from the Respondent Union and his transfer out of the bargaining unit represented by the Respondent Union. The complaint further alleges that the Respondent Union violated Section 8(b)(1)(A) of the Act by refusing to process Hall's resignation and his dues deduction revocation request.

On February 1, 1993, the Respondent Employer filed an answer, admitting certain allegations in the complaint, but denying that it has engaged in any unfair labor practices. On February 5, the Respondent Union filed an answer, admitting certain allegations in the complaint, but denying that Hall notified the Union about his resignation and his dues deduction revocation request. The Union also denied that it has engaged in any unfair labor practices.

On February 22, 1993, the Respondent Employer filed a Motion for Summary Judgment, with a brief and supporting documents attached. The Respondent Employer contends that the Board should dismiss the complaint against it because its admitted refusal to honor Hall's dues-checkoff revocation request was lawful under section 1205 of the Postal Reorganization Act and case law interpreting that statutory language.

On March 1, 1993, the General Counsel filed a response to the Respondent Employer's motion and a motion to sever the cases. The General Counsel agrees that summary judgment may be appropriate as to complaint allegations in Case 16-CA-15857(P) against the Respondent Employer, but he contends that the Board should find the unfair labor practices alleged in the complaint. The General Counsel submits that summary judgment in Case 16-CB-4218(P) is inappropriate because the Respondent Union's answer raises a material factual issue whether Hall notified it about resignation and dues deduction revocation. The General Counsel therefore moves to sever Case 16-CB-4218(P) and to remand it for a hearing.

On March 2, 1993, the Respondent Union filed a response to the motions of the Respondent Employer and the General Counsel and a Cross-Motion for Partial Summary Judgment. The Respondent Union joins the Respondent Employer in urging the Board to grant summary judgment in their favor and to dismiss all unfair labor practice allegations relating to the failure to honor Hall's dues deduction revocation request. The Respondent Union agrees with the General Counsel's motion to sever Case 16-CB-4218(P) to the extent that complaint allegations of a failure to process Hall's resignation request involve disputed factual matters warranting a hearing.

On March 4, 1993, the Board issued an order transferring this proceeding to the Board and a Notice to Show Cause why the Respondents' motions should not be granted. Thereafter, the General Counsel filed a brief in response to the motions of the Respondents, and each Respondent filed a reply brief.

Ruling on Motions

I. JURISDICTION

The Respondent Employer provides postal services for the United States of America and operates various facilities throughout the United States, including the facility in Waxahachie, Texas. The Board has jurisdiction over the Respondent Employer by virtue of the provisions of chapter 12, section 1209 of the Postal Reorganization Act, 29 U.S.C. § 101 (PRA). The National Association of Letter Carriers, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.

II. ADMITTED OR UNDISPUTED FACTS

The Respondent Union represents a unit of the Respondent Employer's employees. The Respondents have been parties to successive collective-bargaining agreements for this unit. The current agreement is effective from June 12, 1991, to November 20, 1994. That agreement contains a checkoff provision which allows the Respondent Employer, on written assignment and authorization from an employee, to deduct union dues from the employee's wages and to remit these dues to the Respondent Union.

On about April 3, 1981, Hall submitted to the Respondent Employer a dues-checkoff authorization form. Consistent with section 1205 of the PRA,¹ the author-

¹ Sec. 1205(a) of the PRA provides:

When a labor organization holds exclusive recognition, or when an organization of personnel not subject to collective-bargaining agreements has consultation rights under Section 1004 of this title, the Postal Service shall deduct the regular and periodic dues of the organization in the unit of recognition if the Post Office Department or the Postal Service has received from each employee, on whose account such deduc-

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ization specified that it was automatically renewable and irrevocable for successive 1-year periods unless written notice of revocation was given to the Postal Service and to the Union during a window period of 20 to 10 days prior to the anniversary of the authorization. Prior to the events related below, Hall did not seek to forestall the renewal of the authorization.

In September 1992,² Hall transferred from a job in the bargaining unit represented by the Respondent Union to another job in a separate bargaining unit represented by a different union. On about October 23, Hall notified the Respondent Employer that he was resigning from the Respondent Union. He submitted to the Respondent Employer a signed form requesting revocation of his dues-checkoff authorization.³

Hall received a written response from the Respondent Employer on about October 28. The letter informed Hall that the Respondent Employer was refusing to honor his revocation request because he had not acted within the established revocation window period, which is 20 to 10 days prior to the April 3 anniversary of Hall's execution of the dues deduction authorization. The Respondents have thereafter continued to enforce Hall's dues deduction authorization.

III. ANALYSIS

In *Postal Service*, 302 NLRB 332, 333 (1991), the Board held that "section 1205 [of the PRA] requires the Postal Service to honor a checkoff authorization's irrevocability period if it is for not more than a year, notwithstanding an authorization signer's resignation from union membership during that period." Accordingly, it was lawful for the Postal Service to refuse to honor an employee's postresignation revocation request which was not made within the prescribed annual window period for revocation.

The Respondents contend that the aforementioned case controls the dues-checkoff revocation issue presented here. The General Counsel, however, contends that the cited precedent is distinguishable from the present case, where the employee seeking untimely revocation of a dues-checkoff authorization has transferred out of the unit and is no longer represented by the Respondent Union. Based on (1) the language of section 1205 of the PRA, (2) a comparison of that language with the antecedent Executive Order 11491 (34 Fed.Reg. 17605 (1969)),⁴ and (3) *Postal Service*, supra, we agree with the Respondents that no exception from the 1-year irrevocability period exists for an

employee who transfers to a bargaining unit represented by a different union.

As explained in *Postal Service*, section 1205 mandates a 1-year period of irrevocability for an employee's checkoff authorization. The issue in this case is whether section 1205 provides an exception to this 1-year period if the employee leaves the bargaining unit during that year. We do not read section 1205 as requiring that result. We recognize that section 1205 begins with the words "When a labor organization holds exclusive recognition" However, we do not read this language as requiring that an employee's checkoff authorization ceases at the moment when the employee leaves the unit in which exclusive recognition exists. Rather, we read this language in the context of section 1205 as a whole.⁵ Section 1205 provides that a dues deduction is permissible only if the employee has signed a checkoff authorization. Construed in light of this provision, we read the opening words of section 1205 to mean that the only employees who can sign a checkoff authorization are those in a recognized unit. If that requirement is satisfied, it makes no difference that the employee subsequently transfers out of the bargaining unit.

The checkoff authorization itself, signed by the employee, is consistent with this result.⁶ The authorization contains no language which would condition the continuing efficacy of the authorization on the employee's remaining in the unit.

Further, there is nothing in the legislative history to support the view that Congress intended to permit an exception to irrevocability for employees who transfer out of the unit. Surely, if Congress wanted to create an exception for transferees, it knew how to do so. The 1978 statute governing Federal employment labor relations evolved from the same Executive Order (11491) that governed Postal Service labor relations prior to the PRA. That Order and the 1978 statute, in marked contrast to the PRA, expressly provide for the termination of a checkoff arrangement when "the agreement between the agency and the exclusive representative involved ceases to be applicable to the employee." 5 U.S.C. § 7115(b)(1). We find it reasonable to infer, from the absence of a comparable express exception to the PRA, that Congress intended no exception for employees who are no longer covered by the agreement because they have transferred out of the unit.

Finally, we note that our conclusion does not mean that the transferring employee will be required to pay dues to two unions, viz., the union named in the checkoff and the union that represents the employee's new unit. There is no union security in the Postal

tions are made, a written assignment which shall be irrevocable for a period of not more than one year.

² All subsequent dates are in 1992, unless otherwise indicated.

³ As previously indicated, a factual dispute exists as to whether Hall communicated to the Union a resignation and dues deduction revocation request. In light of the disposition, we need not resolve the factual dispute concerning the dues deduction revocation request.

⁴ See generally *Postal Service*, 302 NLRB 332, 334-335.

⁵ For an example of the difficulties inherent in attempting to parse sec. 1205 phrase-by-phrase, see fn. 12 of *Postal Service*, supra.

⁶ The authorization is the same as that set forth in *Postal Service* at fn. 2.

Service, and thus the employee is not required to pay anything to the employee's "new" union. And, of course, the employee can revoke the extant authorization at the appropriate time.

Our colleague relies on the "original purpose" behind the irrevocability provision of section 1205(a). In *Postal Service*, supra at 335, the Board said that this purpose was to guarantee postal unions at least a certain level of predictability of dues income. The result in this case is wholly consistent with that purpose. When an employee executes a checkoff authorization, the union can rely on income for a defined period, irrespective of whether the employee transfers out of the unit.⁷

Our colleague also asserts that section 1205(a)'s restriction on revocability was a legislative tradeoff for the absence of union security in the Postal Service. See *Postal Service*, supra at 335. He therefore argues that a union should not be able to enforce checkoff against an employee who has transferred out of the unit, for the union would thereby receive more than union security would allow. However, restrictions on checkoff revocability are not a complete quid pro quo for full union security. Even under the restrictions, employees can timely choose to revoke their checkoff authorizations and thereby cease their financial support of the union. Under union security, the employees are compelled to continue that support, irrespective of their wishes. Accordingly, in order to make the "trade-off" a bit more even, section 1205(a) precludes revocability for a defined period of time, irrespective of whether the employee remains in the unit. This result allows for income stability for the union. And it does so without the compulsion of union security, for the employee voluntarily signs the checkoff authorization.

Based on the analysis set forth above and in *Postal Service*, 302 NLRB 332 (1991), we find that the Respondents did not violate the Act by refusing to give effect to the Charging Party's untimely attempted revocation of checkoff authorization. On this basis, we shall grant the Respondent Employer's Motion for Summary Judgment and the Respondent Union's Cross-Motion for Partial Summary Judgment by dismissing all unfair labor practice allegations relating to the dues-checkoff revocation issue.

The complaint additionally alleges that the Respondent Union failed and refused to honor the Charging Party's request to resign membership. The Respondent Union, however, denies that it ever received notification of resignation from the Charging Party. In view of the outstanding factual dispute on this issue, we grant the General Counsel's motion to sever the

8(b)(1)(A) allegation dealing with the Charging Party's resignation. We shall remand this allegation to the Region for further appropriate proceedings.

ORDER

The complaint in Case 16-CA-15857(P) is dismissed. The complaint allegations of 8(b)(1)(A) violations by the Respondent Union in Case 16-CB-4218(P) are dismissed insofar as they relate to the enforcement of the Charging Party's checkoff authorization. Complaint allegations of 8(b)(1)(A) violations in Case 16-CB-4218(P) for purported interference with the Charging Party's right to resign membership are remanded to the Region for further proceedings.

CHAIRMAN STEPHENS, dissenting in part.

I would not grant the Respondents' summary judgment motions concerning their refusal to honor Charging Party Hall's dues-checkoff revocation outside the annual window period for revocation. Instead, I would find that the Respondents' refusal to honor the revocation violated the Act as alleged in the consolidated complaint. I therefore dissent from the dismissal of all unfair labor practice allegations relating to the dues-checkoff issue. In all other respects, I join the majority.

I believe that the General Counsel has the better argument in this case. Notwithstanding the unequivocal statements in *Postal Service*, 302 NLRB 332 (1991), as to the irrevocability of checkoff authorizations, I read section 1205(a) as assuming that the union maintains its exclusive representative status with respect to both the unit in general and the employees in particular. Thus, if the union ceases to "hold[] exclusive recognition" status, the checkoff authorizations for the whole unit are revoked by operation of law. Similarly, if an employee ceases to be included in the unit—for example, as a result of a transfer—the checkoff is likewise revocable as to that individual.

Postal Service, supra, is distinguishable because the employee, notwithstanding his resignation, was still included in the bargaining unit, and as noted by the General Counsel, still entitled to the benefits of union representation (including the duty of fair representation) from the assignee union. Once the employee was out of the unit, he was no longer a "free rider." As the General Counsel also notes, the parties recognize the significance of leaving the unit, in the case of an employee becoming a supervisor: His checkoff is subject to revocation. Likewise, I would be surprised if an employee who terminates his employment still must abide by the checkoff for the remainder of the year. In short, I do not see how the original purpose behind the irrevocability provision—providing income stability as a tradeoff for eliminating the union-security provisions allowed under the old Executive Order—is apropos to one who is no longer in the unit.

⁷Concededly, the authorization can end during that period if the employee becomes a supervisor. The parties thereby avoid the problem of having an agent of management giving financial support to the union. This situation is not present here.

Although the Respondent Union claims that subsection (b) of section 1205 is controlling,¹ that section

¹ Subsec. (b) reads:

Any agreement in effect immediately prior to the date of enactment of the Postal Reorganization Act between the Post Office Department and any organization of postal employees which provides for deduction by the Department of the regular and periodic dues of the organization from the pay of its members, shall continue in full force and effect and the obligation for such deductions shall be assumed by the Postal Service. No such deduction shall be made from the pay of any

strikes me as merely having a transitional purpose: To preserve the force of agreements in effect at the time of enactment of the Postal Reorganization Act. I would not read it as giving unions more rights than otherwise afforded under subsection (a). Thus, for example, a union which originally had an agreement covered by subsection (b) could not now invoke that subsection to circumvent the requirement in subsection (a) that it hold exclusive recognition status.

employee except on his written assignment, which shall be irrevocable for a period of not more than one year.